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January 30, 2025

The Honorable Michelle King
Acting Commissioner
Social Security Administration
6401 Security Boulevard
Baltimore, Maryland 21235

Re: Comments Regarding SSA's Public Notice on Modifying Master Files of Social Security Number (SSN) Holders and SSN Applications (60-0058), Docket Number SSA-2024-0046

Below are comments of the American Conservative Union Foundation's (d/b/a. Conservative Political Action Coalition Foundation) (hereinafter "CPAC Foundation") Center for Regulatory Freedom (hereinafter "CRF") on the Social Security Administration's (SSA) public notice of their intent to modify an existing system of records entitled, "Master Files of Social Security Number (SSN) Holders and SSN Applications (60-0058)," Docket Number SSA-2024-0046, published in the Federal Register on December 31, 2024.

CRF is a project of the CPAC Foundation, a non-profit, non-partisan 501(c)(3) research and education foundation. Our mission is to inject a common-sense perspective into the regulatory process, to ensure that the risks and costs of regulations are fully based on sound scientific and economic evidence, and to ensure that the voices, interests, and freedoms of Americans, and especially of small businesses, are fully represented in the regulatory process and debates. Finally, we work to ensure that regulatory proposals address real problems, that the proposals serve to ameliorate those problems, and, perhaps most importantly, that those proposals do not, in fact, make public policy problems worse.

CRF appreciates the opportunity to comment on SSA's public notice regarding their intended revisions to one of their current systems of records. However, CRF finds it necessary to note that SSA's actions are inappropriate given the current transition taking place between administrations. It is untoward to open these rulemakings before the new administration has had time to review regulatory proposals and decide whether they still want to pursue the changes, especially since these proposed modifications are in direct violation of an Executive Order recently issued by newly elected President Donald J. Trump.

For these reasons, CRF strongly opposes the incorporation of “gender-inclusive language” into SSA’s central system of records, as well as attempts by federal agencies to circumvent the new administration’s authority to review current regulatory proposals and notices. CRF recommends that SSA reconsider these proposed revisions in conjunction with Executive Order 14166 entitled, “Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government,” and ensure that both systems of records do not obstruct the implementation of that order.

Introduction

The system of records that SSA intends to modify, entitled “Master Files of SSN Holders and SSN Applications (60-0058),” contains extensive identification information about every person who has applied for or received an SSN. SSA plans to revise the categories of individuals covered by the system and “routine use No. 14” to incorporate “gender-inclusive language” to support Executive Order 13988, issued by former President Joe Biden. “Routine use No. 14” refers to a specific provision within SSA’s regulations under the Privacy Act of 1974 which allows SSA to share data with other government agencies to better manage Social Security programs and identify fraud and improper benefit claims.

The system of records that SSA aims to amend is integral to Social Security programs, as this system collects information to assign SSNs for a wide variety of administrative and program purposes, including Disability Insurance, Supplemental Security Income, and all Medicare and Medicaid claims. Additionally, the information responsible for identifying fraud is found in this system, particularly regarding preventing the issuance of multiple SSNs to a singular person. This extensive database of individuals’ identification information is not only necessary to conduct accurate cross-references when multiple SSNs are issued to the same person, but to assist federal, state, and local entities in the administration of income maintenance and health-maintenance programs.

The importance of this system of records to SSA’s administrative responsibilities is emphasized by the disastrous implications of these proposed modifications. Revisions to this system that fundamentally alter the language and methodology of identifying a key identification characteristic threaten to undermine the efficacy of SSNs and Social Security programs, as federal approval of self-identification enables abundant fraud and security concerns. Moreover,

SSA's decision to pursue such drastic changes according to an Executive Order issued by the previous administration a month after that administration lost the 2024 presidential election is wildly inappropriate. Rather than incorporate radical gender ideology into a system of records that influences the administration of all SSNs and Social Security programs, SSA should ensure all systems of records comply with the federal definitions of the sexes, as mandated by President Trump in Executive Order 14166.

Relevant Executive Orders

Executive Order 13988

On January 25, 2021, former President Biden signed Executive Order 13988, entitled “Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation,” which directed federal agencies to apply federal legal protections against sex-based discrimination to discrimination based on “gender identity” and sexual orientation. The gender identity-based discrimination this executive order sought to remedy is not unjust, as sex-segregated restrooms, locker rooms and sports are integral to maintaining safety and fairness among the sexes in society. However, the Biden-Harris administration infused radical gender ideology into federal law and eroded those protections, prioritizing self-identification of gender over biological realities under the guise of “preventing and combating discrimination.”

Executive Order 14166

President Trump rescinded Executive Order 13988 almost immediately following his inauguration through the issuance of another Executive Order entitled, “Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government.” Under this executive action, the official policy of the United States and the federal government only recognizes two sexes, male and female respectively. A more notable provision within this order is the declaration that the sexes are not interchangeable, and the basis for these categorizations of sex is “grounded in fundamental and incontrovertible reality.” Executive Order 14166 effectively reversed the Biden-Harris administration’s regulatory framework that allowed for sex changes on federal forms of identification, as well as the acknowledgement of a “third” or “nonbinary” sex category on federal forms of identification, and restored sex-based protections for women in public spaces.

SSA's planned modifications to their system of records directly contradict the orders issued by President Trump, further emphasizing SSA's misstep in pursuing any significant revisions during administrations' transitions into and out of the White House. SSA's intent to incorporate “gender-inclusive language” is simultaneously a delayed attempt to respect a rescinded executive action from the previous administration and a blatant violation of a current executive action. In fact, President Trump's executive order completely prohibits the use of the term “gender” altogether, requiring all federal employees and agencies to exclusively use the term “sex” in all

corresponding policies and documents. Thus, the demand for “gender-inclusive language” is null and void, especially as applied to Social Security programs which are now bound by the sex-specific statutory language of Executive Order 14166.

Implementation Issues

Illegal Aliens

One of the routine uses of the system of records discussed is to assist the Department of Homeland Security (DHS) in the identification and location of aliens in the United States. The unlawful incorporation of “gender-inclusive language” into SSA’s most comprehensive system of records poses a substantial security threat, particularly regarding the documentation of illegal aliens. DHS’s ability to identify and locate aliens will likely be compromised by SSA’s adherence to former President Biden’s policy of transient self-identification as it relates to gender. The incongruity between someone’s stated “gender identity” and their visible inalterable sex will make it more difficult for DHS to properly locate and identify individuals, especially since the incorporation of “gender-inclusive language” allows individuals to more easily change the gender marker on their SSN to evade detection from DHS and other federal agencies.

Gender Markers

The incorporation of “gender-inclusive language” through routine use No. 14 allows SSA to not only share gender-related information with other federal agencies but impair the accuracy of that information by using gendered terms that are based upon self-attestation as opposed to innate biological characteristics. It is important to know that the “gender-inclusive” policies of the previous administration are not only insulated from determinations of sex based on biological factors but also fail to require any proof of gender reassignment surgery or a definitive “gender transition”. The lack of any substantive requirements for a trans-identified individual to obtain an SSN that contradicts their biological sex will allow those individuals to have an SSN with identification information that differs dramatically from that individual’s other forms of federal identification that are compliant with Executive Order 14166.

Conclusion

Despite being aware of the results of the 2024 presidential election, SSA chose to neglect the incoming administration as well as the authority of the new administration in reviewing pending rules and rule changes. SSA’s revisions are entirely inappropriate when compared to the statutory language of Executive Order 14166. The modifications discussed in SSA’s public notice adhere to a rescinded executive measure and will not allow SSA and its respective programs to comply with current federal stipulations regarding the immutability of sex. SSA’s desired changes to its central system of records would prompt numerous security concerns, as the

transient nature of gender ideology allows individuals to decide their own gender according to subjective self-identification rather than fixed, recognizable biological traits.

SSA's plan to incorporate "gender-inclusive language" into its system of records is not only an attempt to circumvent the elimination of radical gender ideology within all federal agencies and programs, but also an attempt to undermine the new administration. President Trump's nearly immediate signature and subsequent issuance of Executive Order 14166 emphasizes his administration's policy goals of ensuring women and children are protected by laws that define sex according to biology. The preservation of "gender-inclusive language" within any federal agency is a concerted effort to hinder those goals, and SSA has attempted to do so by prioritizing the acknowledgement of self-attested "gender identity" over deference to the Office of the President, the office the agency is beholden to.

CRF strongly recommends that SSA rescind any modifications or revisions to their system of records that conflict with any of the new administration's executive measures. CRF opposes the incorporation of "gender-inclusive language" into SSA's system of records but broadly opposes all efforts by any federal agencies to reinstate gender ideology despite the statutory requirements for all federal entities described in Executive Order 14166. CRF suggests that SSA, as well as other agencies, refrain from partaking in any rulemakings or rule changes amidst the transition process following a presidential election.

If you have any questions, do not hesitate to contact me at ALanger@conservative.org.

Thank you,

A handwritten signature in black ink, appearing to read "Andrew M. Langer".

Andrew Langer
Director
CPAC Foundation Center for Regulatory Freedom